IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1777 of 2005

M/s Dolvi Gases ... Applicants

V/s

M/s Valiant Projects
Pvt. Ltd. and Anr. ... Respondents

WITH

CRIMINAL WRIT APPLICATION NO. 1778 of 2005

M/s Dolvi Gases ,...Applicants

V/s

M/s Valiant Projects Pvt.Ltd. and Anr..Respondents

Mr.M.B.Shirsat for Applicants
Mr.G.M.Shetty for Respondent no.1
Mr.M.S.Mhambray,APP for State

CORAM:SMT.V.K.TAHILRMANI,J.

DATED:3rd August 2005

P.C.:-

1. Heard the learned advocate for the Applicants, and the learned A.P.P. for the State and Mr.G.M.Shetty for Respondent no.1 i.e. original complainant.

2. The applicants have prayed for quashing of process issued in Complaint No.643/SS/05 (Cri.Application No.1777 of 2005) and Complaint NO.642/SS/05 (Cri.Application No.1778 of 2005) which are pending in the Court of learned Metropolitan Magistrate, 6th Court, Mazgaon, Mumbai. In the said cases process have been issued against the Applicants under Section 138 read with 141 of Negotiable Instrument Act.

3. The Applicants had preferred applications before the learned Magistrate for recalling of process in the said two cases. The learned Magistrate rejected the said applications in view of decision of Apex Court in the case of Adalat Prasad V/s Rooplal Jindal and Ors. **2004 (4) Mh.L.J. 274** In view of the decision of the Supreme Court in the case of Adalat Prasad (supra) it is clear that the Magistrate does not have the power to recall the process. In this view of the matter no fault can be

found with the order of the learned Magistrate rejecting the application for recall of process. Hence I am not inclined to interfere with the order of the Magistrate rejecting the applications for recall of process.

4. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No. 213 of 2005 and order dated 21st June 2005 passed in Criminal application NO.550 of 2005, the applicants have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the applicants prefer revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the Applicants to prefer revision before the concerned Sessions Court. The learned Advocate for the Applicants state that the necessary revision would be preferred within a period of five weeks from today. It is made clear that the revision shall be preferred in respect of the order of the Magistrate issuing process against the Applicants and not in respect of order of the Magistrate rejecting the applications for recall process. The learned Advocate for Respondent no.1 fairly states that no objection would be raised in respect of delay in filing revision.

6. On the necessary revision being preferred by the Applicants before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

7. The learned Advocate for the applicant has further submitted that in the said case, NBW came to be issued against the applicant. It is prayed that the said NBW be quashed. I am not inclined to quash NBW as in my opinion, it would be appropriate that the applicant prefers application before the trial Court for setting aside the said NBW.

8. Liberty is granted to the applicant to prefer the necessary application before the learned Magistrate for for setting aside the NBW. The learned Advocate for the applicant states that the necessary application will be preferred within five weeks from today. In order to enable the applicant to take necessary steps for setting aside NBW, the said NBW is stayed for a period of five weeks from today.

9. Office to issue an authenticated copy of this order to the parties.

10. Applications are disposed of.

(SMT.V.K.TAHILRAMANI,J.)